

HOUSE BILL 1106

By Buck

AN ACT to amend Tennessee Code Annotated, Title 49,  
Chapter 6, relative to questioning of pupils.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 49, Chapter 6, is amended by adding the following section as a new, appropriately designated section thereto.

49-6-\_\_\_\_.

(a) The general assembly finds and declares all of the following:

(1) Community policing and the presence of school resource officers on school campuses serve a vital role fostering a safe learning environment for pupils, faculty, and staff.

(2) In order to enable members of the law enforcement community to more effectively fulfill this role, it is the intent of the general assembly to encourage law enforcement officers to form positive relationships with both parents and pupils who are part of the school community.

(3) It is also vitally important that parents be given a meaningful opportunity to be active and informed participants in the educational lives of their children, including situations involving issues of school discipline and interaction with members of the law enforcement community in the school setting.

(4) In furtherance of this objective, it is the intent of the general assembly to increase the level of participation of parents when their minor children are being questioned by law enforcement in school or at a school-sponsored activity.

(b)

(1) Before making an elementary school pupil available to a peace officer for the purpose of being questioned by a peace officer, the principal of the

elementary school, or such principal's designee, shall take immediate steps to obtain the oral consent of the parent or guardian of the pupil to permit the questioning.

(2) If the parent or guardian requests that the pupil not be questioned until such parent or guardian can be present, the pupil may not be made available to the peace officer for questioning until the parent or guardian is present.

(3) If school officials are unable, after reasonable efforts undertaken within a period not to exceed one (1) hour, to contact a parent or guardian in order to obtain consent pursuant to this subsection, a school administrator, school counselor, or school teacher who is reasonably available and selected by the pupil, shall be present during the questioning.

(4) If the school administrator, school counselor, or school teacher selected by the pupil declines to be present during the questioning, the principal, or such principal's designee, shall be present during the questioning.

(5) In those cases in which school officials are unable to contact the pupil's parent or guardian, after the questioning has been completed, the principal or such principal's designee shall immediately notify the parent or guardian that the questioning has occurred and make the staff member who was present during the questioning available to inform the parent or guardian about the questioning.

(c)

(1) Before making a high school pupil under eighteen (18) years of age available to a peace officer for the purpose of questioning by the peace officer, the principal of the school, or such principal's designee, shall inform the pupil that

the pupil has the right to request that such pupil's parent or guardian or an adult family member, or person on the list of emergency contacts for the pupil be present during the questioning.

(2) If the person selected by the pupil cannot be made available within a reasonable period of time, not exceeding one (1) hour, or declines to be present at the questioning, the principal or such principal's designee shall inform the pupil that the pupil may select as an alternate, a school administrator, school counselor, or school teacher who is reasonably available to be present during the questioning.

(3) If the person selected by the pupil declines to be present during the questioning, the principal, or such principal's designee, shall so inform the pupil and advise the pupil that the principal, or such principal's designee, will be present during the questioning if the pupil so requests.

(4) If the pupil exercises his or her right pursuant to this subsection to have one of the persons designated in subdivision (1), (2), or (3) present during the questioning, the pupil may not be made available to the peace officer for questioning until that person is present.

(d) Subsections (b) and (c) do not apply if any of the following conditions exist:

(1) The peace officer reasonably believes that, due to exigent circumstances, the inability of the officer to immediately question the pupil will materially interfere with the ability of the officer to conduct such officer's investigation and there is a substantial risk that a suspect may not be apprehended or prosecuted in a timely manner. In that case, if an elementary school pupil is being questioned, the principal or such principal's designee shall be present during the questioning and shall take immediate and continuous steps

to notify the parent or guardian by telephone about the questioning and, if unsuccessful in doing so before the questioning, shall take immediate steps to notify the parent or guardian about the questioning after the questioning has been completed. If a high school pupil is being questioned, the pupil shall be given the option of having the principal or such principal's designee present during the questioning.

(2) The peace officer reasonably believes that there is a substantial risk of immediate personal injury or substantial property damage. In that case, if an elementary school pupil is being questioned, the principal or such principal's designee shall be present during the questioning and shall take immediate and continuous steps to notify the parent or guardian by telephone regarding the questioning, and if unsuccessful in doing so before the questioning is completed, shall take immediate steps to notify the parent or guardian regarding the questioning after it has been completed. If a high school pupil is being questioned, the pupil shall be given the option of having the principal or such principal's designee present during the questioning.

(3) The minor pupil being questioned is suspected of being a victim of child abuse as defined in § 39-15-401 or § 39-15-402 , or the minor pupil is being questioned pursuant to title 37, chapter 1, part 6, and either the principal or such principal's designee or the peace officer has reasonable belief that the pupil would be endangered by the notification requirements of subsection (b) or (c). In that case, if the pupil is an elementary school pupil, the principal of the school, or such principal's designee, shall inform the pupil that the pupil has the right to select a school administrator, school counselor, or school teacher who is reasonably available to be present during the questioning, as provided in

subdivisions (3) and (4) of subsection (b). If the pupil is a high school pupil, the principal of the school, or such principal's designee, shall inform the pupil that the pupil has the right to select another person to be present during the questioning, as provided in subsection (c).

(4)

(A) In the case of an elementary school pupil, the peace officer's questioning of the pupil concerns the commission of criminal activity by the person who would otherwise be present during the questioning pursuant to subsection (b). In that case, the principal of the school, or such principal's designee, shall inform the pupil that the pupil has the right to select a school administrator, school counselor, or school teacher who is reasonably available to be present during the questioning as provided in subsection (b).

(B) In the case of a high school pupil, the peace officer's questioning of the pupil concerns the commission of criminal activity by the person selected by the pupil pursuant to subsection (c). In that case, the principal or such principal's designee shall so inform the pupil and advise the pupil that he or she may select another person to be present during the questioning, as provided in subsection (c).

(5) The pupil is on probation or parole and is being interviewed or otherwise contacted by a probation or parole officer in the normal course of duties of the probation or parole officer.

(e) Except in exigent circumstances as determined by the peace officer, any questioning of a pupil by a peace officer for any reason other than the ordinary, day-to-day conversation that is to be expected among members of a school community, shall

take place in a private location, including, but not limited to, the principal's office, and may not take place in a classroom or hallway or other areas where pupils or others may be present.

(f) A school official present during the questioning of a pupil under this section may not disclose matters discussed with the pupil other than to the parent or guardian of the pupil, the attorney for the pupil, other school officials, or a court.

(g) Any school officer or staff member present at the questioning of the pupil by a peace officer pursuant to this section is immune from civil or criminal liability arising from such person's participation during the questioning of the pupil.

(h) The failure of school officials to comply with this section does not render any evidence, otherwise lawfully obtained by a peace officer, inadmissible in a court of law or result in any other sanction in a criminal trial.

(i) For the purposes of this section, "questioning" means only formal questioning in which the principal or such principal's designee makes a pupil available to a peace officer, at the request of the peace officer, the principal or such principal's designee, for questioning as a victim, suspect, or person with information concerning a suspected violation of a school rule that constitutes grounds for expulsion or a suspected commission of a crime. For the purposes of this section, "formal questioning" means only questioning of a pupil by a peace officer that occurs on school grounds. "Formal questioning" does not include ordinary, day-to-day conversations between a pupil and a school resource officer or peace officer.

(j) For the purposes of this section:

(1) "Elementary school pupils" means pupils enrolled in kindergarten or any of grades 1 to 8, inclusive; and

(2) "High school pupils" means pupils enrolled in any of grades 9 to 12, inclusive.

SECTION 2. This act shall take effect July 1, 2007, the public welfare requiring it.